

February 18, 2009

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 08-1284

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UNITED STATES
DISTRICT COURT

In Regard to the Matter of:

Bayside State Prison
Litigation

OPINION/REPORT
OF THE
SPECIAL MASTER

KENNETH BECHEAM

-vs-

WILLIAM H. FAUVER, et al,

Defendants.

* * * *

WEDNESDAY, FEBRUARY 18, 2009

* * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

February 18, 2009

Page 3

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February 18, 2009

Page 4

1 JUDGE BISSELL: I'm now reopening the
2 matter involving Kenneth Becheam, docket number
3 08-1284.

13 As finalized after review under Local
14 Civil Rule 52.1, the transcript of this oral opinion
15 will constitute the written report required by
16 paragraph seven of the Order of Reference to a
17 Special Master.

18 Mr. Bechcam was a resident of D Unit.
19 He describes the incident that occurred to him as
20 occurring in August of '97 without any more
21 particular personal recollection.

22 Mr. Becheam's encounter with SOG
23 officers evolved from his efforts to make use of the
24 telephone at a time apparently when telephone
25 privileges were being restored. As he testified

February 18, 2009

Page 5

1 beginning at page 16 of his transcript of October
2 31st, 2008 and I'll paraphrase it first, there was a
3 bank of four telephones there, he was assigned one
4 that did not work well and his phone call, although
5 he was only making one, was being cut off.

6 Accordingly, he asked the officer who was supervising
7 him at the time as to whether he could replace the
8 call and was told no that he couldn't. He asked to
9 use another phone. He was also told no. Apparently
10 he also tried to redial the number on the first phone
11 and the officer regarded this as a violation of the
12 rules with regard to phone use and told him to go
13 back to his bed area, which he did.

14 He said very shortly after he returned
15 to his bunk he heard the SOG officers coming. They
16 extracted him from his cell, took him into the main
17 TV room, strip searched him and at this point a
18 certain colloquy occurred as he describes it
19 beginning at line 17 on page 18.

20 "When he got through he said what did
21 you do, pop. I said I didn't do anything. He said
22 I'm going to ask you again, what did you do. I said
23 I was using the phone and the phone went dead on me.
24 So I asked him, can I redial it. And so what took
25 place after that was they told me to put my hands

February 18, 2009

Page 6

1 behind my back and they cuffed me."

2 Apparently he had been nude, but was
3 redressed at this time. They then proceeded to take
4 him to the nurse. He had some trouble moving in
5 transit and they used efforts to prop him up and
6 assist his progress. That was no difficulty. He
7 hadn't yet received any punishment or assaults. He
8 passed muster before the nurse and then was taken
9 over to B Unit for lockup.

10 He begins once again at page 19 line
11 14:

12 "As I was going to B Unit my leg gave
13 out. Once it gave out I was on my knees there. So
14 he said, listen, you don't want my men to pick you up
15 and carry you, you're not going to like it. I said
16 okay, give me a second. And when he gave me a
17 second, I got up and I like semi ran up the stairway.
18 They had long stairs going up to B Unit and I hurried
19 up as quick as possible because I knew my back would
20 go out again. So what happened after that is when I
21 got inside, I seen, you know, a couple of police
22 sitting around. He had the whole riot gear on, you
23 know, the helmet, the vest, the big long sticks, the
24 batons. So they told me to undress there and I
25 undressed again. While I'm undressed there, one of

February 18, 2009

Page 7

1 them, I thought he was joking really, one of the
2 officers said, say I love Bayside. And I looked at
3 him like are you serious. So he was like you see him
4 over there, I think it was a middle age guy maybe in
5 his twenties or thirties, he was crying and he was
6 singing I love Bayside loudly."

7 The description goes on about a
8 collateral matter and resumes at page 21 on line six.

9 "Question: What happened to you next?

10 "Answer: After I got dressed, the cuff
11 was put back on and I was told sit back down. I was
12 kicked on my right side and had about three or four
13 steps to go down to where the cell is at.

14 "Question: Let me interrupt you, sir,
15 because I knocked you off your narrative. Let's go
16 back to when you were nude and they were telling you
17 to sing, what happened there?"

18 He talks again about the singing and
19 then after that he said:

20 "Answer: But from there they picked me
21 up and took me to the cell. And as they took me to
22 the cell, one of them, he chose a guy inside the cell
23 to get under the bed. When he took me in there,
24 that's when he kind of threw me down on the cuffs and
25 got tighter. They acted like it was nothing to them.

February 18, 2009

Page 8

1 And from there actually, you know, I just remember my
2 hands swelling up. My back was in pain, you know.

3 "Question: How did you get down the
4 stairs, sir?

5 "Answer: The stairway where I was
6 singing at, after they kicked me down, I was about
7 two maybe three stairs going down because you go into
8 the units and you have like a podium where the
9 officer sits, then when you get ready to get down to
10 the first floor, you have to go down about two or
11 three stairs. And when they pushed me down there or
12 kicked me it was, I just start singing really, I
13 became fearful of them.

14 "Question: How many times did you get
15 kicked? Can you estimate?

16 "Answer: I gave up counting, I really
17 did.

18 "Question: Did you get kicked in your
19 back in your back.

20 "Answer: I got kicked in the back, I
21 was hit with the batons in the lower right part of my
22 back, my hip. I got hit in the top of my shoulders
23 between the center of my back and my ribs.

24 "Question: Did you get hit in the
25 neck, sir?

February 18, 2009

Page 9

1 "Answer: Absolutely, at the top of my
2 neck and shoulder.

3 "Question: Now, this beating that you
4 took, did it hurt?

5 "Answer: Yes, it did.

6 "Question: For how long did the
7 beating hurt?

8 "Answer: I couldn't lay on my right
9 side, I had to lay on my stomach to go to sleep for
10 at least five or six days. Nobody came to see me,
11 nobody."

12 Page 27 he talks about possible
13 psychological impact of this event, but acknowledged
14 also that they are not recoverable and I have
15 determined that they haven't been proved here with
16 adequate precision and support to support any claim
17 for psychological damages.

18 At page 28 I asked some questions
19 myself for some clarification here. And beginning at
20 line 14:

21 "Question: When was it you mentioned
22 that you were kicked or pushed down these two or
23 three stairs in B Unit as you were being directed to
24 a cell there, correct?

25 "Answer: Yes.

February 18, 2009

Page 10

I might add I studied the cross-examination, and I conclude that it did not impugn the accuracy of his testimony with regard to the treatment by the SOGs when going into B Unit. It did indicate and reveal that he had a pre-existing back condition and the cross-examination also established that there was indeed a pre-existing condition here which was aggravated by the events in question in B Unit. Also, however, his residual pain was as much if not more from the pre-existing condition than any exacerbation. In other words, I

February 18, 2009

Page 11

1 have not assigned, if you will, his permanency solely
2 to the beating that took place here. It has other
3 underlying pre-existing causes, but nevertheless, it
4 did aggravate it and was a contributing factor even
5 in the permanency that ensued.

6 This Master is recommending a judgment
7 for the plaintiff in this case. There was absolutely
8 no valid penalogical purpose for the manner in which
9 he was treated upon being brought into B Unit. He
10 was fully cuffed, completely submissive, no danger to
11 the officers in question and furthermore was being
12 brought to B Unit not because of any violent activity
13 that he had undertaken, but merely for, in my view, a
14 rather benign infraction, to wit, an effort to use a
15 phone twice rather than once. That's frankly the
16 most charitable viewing that one could give to the
17 defendants or the prison authorities here.

18 Accordingly, we are dealing here with
19 excessive force, inflicting cruel and unusual
20 punishment and sadistic acts by the SOG officers
21 involved for the reasons indicated above. There was,
22 indeed, excessive, unnecessary and sadistic force
23 imposed upon Mr. Becheam within the contemplation of
24 the legal principles recited in the jury instructions
25 which govern our proceeding.

February 18, 2009

Page 12

Finally, although not every item of evidence has been discussed in this opinion/report, all evidence presented to the Special Master was reviewed and considered.

17 I find that the injury inflicted here
18 is actionable. I find that the injury was acute
19 initially and that the assault in question here has
20 been a contributor to the continuation of a permanent
21 injury with regard to this gentleman's back, albeit
22 one that pre-existed from other causes as well which
23 continue to contribute to his present condition.

February 18, 2009

Page 13

1 compensatory damages in the amount of six thousand
2 dollars in Mr. Becheam's favor.

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February 18, 2009

Page 14

1 C E R T I F I C A T E

2

3 I, Theresa O. Mastroianni, a Notary Public and

4 Certified Shorthand Reporter of the State of New

5 Jersey, do hereby certify that the foregoing is a

6 true and accurate transcript of the testimony as

7 taken stenographically by and before me at the time,

8 place, and on the date hereinbefore set forth.

9 I DO FURTHER CERTIFY that I am neither a

10 relative nor employee nor attorney nor counsel of any

11 of the parties to this action, and that I am neither

12 a relative nor employee of such attorney or counsel,

13 and that I am not financially interested in the

14 action.

15

16

17

18

19 *Theresa O. Mastroianni*

20 Theresa O. Mastroianni, C.S.R.

21 Notary Public, State of New Jersey

22 My Commission Expires May 5, 2010

23 Certificate No. XI0857

24 Date: February 19, 2009

25

February 18, 2009

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A	14:12 ATTORNEYS 3:7,12,16 Audubon 2:21 August 4:20 authorities 11:17 award 12:25	bunk 5:15 C	constitute 4:15 continuation 12:20 continue 12:23 contribute 12:23 contributing 11:4 contributor 12:20 causes 11:3 12:22 cell 5:16 7:13,21 7:22,22 9:24 10:3,4,12 center 8:23 certain 5:18 Certificate 14:21 Certified 2:5,19 14:4 certify 14:5,9 batons 6:24 8:21 10:2 Bayside 1:5 7:2 7:6 beaten 10:2 beating 9:3,7 11:2 Becheam 1:6 4:2 4:18 11:23 12:2 Becheam's 4:12 4:22 13:2 bed 5:13 7:23 beginning 5:1,19 9:19 begins 6:10 benign 11:14 big 6:23 BISSELL 1:20 4:1 BLACK 3:14 BLACKWOOD 3:15 brought 11:9,12 bunch 10:7	directives 4:5 discussed 12:14 district 1:1,1 2:8 12:25 docket 4:2 dollars 13:2 dressed 7:10
				E
				E 3:2,2 14:1,1 effort 11:14 efforts 4:23 6:5 egregious 12:10 employee 14:10 14:12 encounter 4:22 ensued 11:5 enter 12:25 ESQUIRE 3:4,5 3:10,14 ESQUIRES 3:9 established 10:21 estimate 8:15 et 1:8 event 9:13 events 10:22 evidence 12:14 12:15 evolved 4:23 exacerbation 10:25 excessive 11:19 11:22 Expires 14:20 extent 4:11 extracted 5:16
				F
				F 14:1 fact 12:1 factor 11:4 facts 4:8 FAUVER 1:8 favor 13:2 fearful 8:13

February 18, 2009

16

February 1:15 14:21 finalized 4:13 Finally 12:13 financially 14:13 find 12:9,17,18 first 5:2,10 8:10 five 9:10 floor 8:10 10:3 force 11:19,22 12:6 foregoing 14:5 FORMAROLI 2:18 forth 4:9 14:8 four 5:3 7:12 frankly 11:15 fully 11:10 FURTHER 14:9 furthermore 11:11 G gear 6:22 gentleman's 12:21 Gerry 2:8 give 6:16 11:16 go 5:12 6:20 7:13,15 8:7,10 9:9 goes 7:7 going 5:22 6:12 6:15,18 8:7 10:18 govern 11:25 GRANT 3:5 GRIEGEL 3:4,4 guiding 4:7 guy 7:4,22 H H 1:8 HAMILTON 3:6	hands 5:25 8:2 10:14 happened 6:20 7:9,17 heard 5:15 helmet 6:23 hereinbefore 14:8 HIGHWAY 3:6 hip 8:22 hit 8:21,22,24 HONORABLE 1:20 Horse 2:20 3:14 House 2:8 hurried 6:18 hurt 9:4,7 I impact 9:13 imposed 11:23 12:6 impugn 10:17 incident 4:19 indicate 10:19 indicated 11:21 inexcusable 12:4 inflicted 12:2,17 inflicting 11:19 infraction 11:14 initially 12:19 injury 12:17,18 12:21 inside 6:21 7:22 instructions 4:10 11:24 interested 14:13 interrupt 7:14 involved 11:21 involving 4:2 issued 4:4 item 12:13	14:5,20 JOHN 1:20 joking 7:1 JUDGE 4:1 judgment 11:6 11:24 K Kenneth 1:6 4:2 kicked 7:12 8:6 8:12,15,18,20 9:22 10:2,7 kind 7:24 10:10 knees 6:13 knew 6:19 knocked 7:15 know 6:21,23 8:1,2 L lack 12:6 law 4:7 LAWRENCE 3:10 lay 9:8,9 leave 10:9 left 10:14 leg 6:12 legal 11:24 Let's 7:15 level 12:10 license 2:6 light 12:1 LINDSAY 3:9 3:10 line 5:19 6:10 7:8 9:20 listen 6:14 Litigation 1:5 Local 4:13 lockup 6:9 long 6:18,23 9:6 looked 7:2 loudly 7:6 LOUGHRY 3:9	love 7:2,6 lower 8:21 M main 5:16 making 5:5 manner 11:8 MARKET 3:10 Master 1:6,20 4:6,17 11:6 12:15 Master's 4:6 Mastroianni 2:5 2:18 14:3,19 matter 1:4 2:5 4:2 7:8 12:12 Mejias 4:10 men 6:14 mentioned 9:21 merely 11:13 middle 7:4 moving 6:4 muster 6:8 N N 3:2 narrative 7:15 neck 8:25 9:2 neither 14:9,11 nevertheless 11:3 New 1:1 2:7,9,21 3:6,11,15 14:4 14:20 nigger 10:8,8,9 NORTH 3:14 Notary 2:7 14:3 14:20 nude 6:2 7:16 number 2:6 4:2 5:10 nurse 6:4,8 O O 2:5 14:3,19 occurred 4:19	5:18 occurring 4:20 October 5:1 officer 5:6,11 8:9 officers 4:23 5:15 7:2 11:11 11:20 okay 6:16 once 6:10,13 10:7 11:15 opinion 4:14 opinion/report 1:5 4:4 12:14 oral 4:14 Order 4:5,16 P P 3:2,2 page 5:1,19 6:10 7:8 9:12,18 pain 8:2 10:23 paragraph 4:16 paraphrase 5:2 part 8:21 particular 4:21 particularly 12:3 parties 14:11 passed 6:8 PC 3:4 penalogical 11:8 period 12:4 permanency 11:1,5 permanent 12:20 personal 4:21 phone 5:4,9,10 5:12,23,23 11:15 pick 6:14 picked 7:20 Pike 2:20 3:14 place 5:25 11:2 14:8
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February 18, 2009

17

plaintiff 11:7	Q	residual 10:23	11:20	Theresa 2:5 14:3
PLAINTIFFS	question 7:9,14	restored 4:25	SOGs 10:18	14:19
3:12,16	8:3,14,18,24	resumes 7:8	solely 11:1	think 7:4 10:11
Plaza 2:8	9:3,6,21 10:1	returned 5:14	South 2:20	thirties 7:5
please 10:5	10:23 11:11	reveal 10:19	Special 1:6,20	thought 7:1 10:8
PM 2:9	12:19	review 4:13	4:6,6,17 12:15	thousand 13:1
podium 8:8	questions 9:18	reviewed 12:16	SQUARE 3:6	three 7:12 8:7,11
point 5:17	quick 6:19	ribs 8:23	stairs 6:18 8:4,7	9:23
police 6:21		right 7:12 8:21	8:11 9:23 10:7	threw 7:24
pop 5:21		9:8	stairway 6:17	tight 10:14
possible 6:19	R	riot 6:22	8:5	tighter 7:25
9:12	R 3:2 14:1	RODNEY 3:14	start 8:12	time 4:24 5:7 6:3
precision 9:16	ran 6:17	room 5:17	State 1:5 2:7 3:6	12:4 14:7
present 12:23	RAY 3:14	rose 12:9	14:4,20	times 8:14 10:10
presented 12:15	ready 8:9	ROSELLI 3:4	10:13	
pre-existed	really 7:1 8:12	Rule 4:14	stenographica...	tired 10:11
12:22	8:16	rules 5:12	14:7	told 5:8,9,12,25
pre-existing	reasons 11:21		steps 7:13	6:24 7:11
10:19,21,24	received 6:7	S	STEVEN 3:4	top 8:22 9:1
11:3	recited 11:24	S 3:2	sticks 6:23	transcript 2:4
principles 4:7	recollection 4:21	sadistic 11:20,22	stomach 9:9	4:14 5:1 14:6
11:24	recommend	searched 5:17	STREET 3:10	transit 6:5
prison 1:5 11:17	12:11,24	second 6:16,17	strikings 12:2	treated 11:9
privileges 4:25	recommending	see 7:3 9:10	strip 5:17	treatment 10:18
proceeded 6:3	11:6	seen 6:21	studied 10:15	tried 5:10
proceeding	recoverable 9:14	semi 6:17	submissive	trouble 6:4
11:25	recovery 12:8	serious 7:3	11:10	true 14:6
proceedings 2:4	redial 5:10,24	set 4:9 14:8	supervising 5:6	trying 10:11
progress 6:6	redressed 6:3	seven 4:16	support 9:16,16	TV 5:17
prolonged 12:3	Reference 4:5	severe 12:5	12:10	twenties 7:5
12:7	4:16	short 12:4	swelling 8:2	twice 11:15
prop 6:5	regard 1:4 5:12	Shorthand 14:4		two 8:7,10 9:22
proved 9:15	10:17 12:21	shortly 5:14	T	U
psychological	regarded 5:11	shoulder 9:2	T 14:1,1	underlie 4:8
9:13,17	relative 14:10,12	shoulders 8:22	take 6:3	underlying 11:3
Public 2:7 14:3	remember 8:1	side 7:12 9:9	taken 2:5 6:8	undertaken
14:20	reopening 4:1	sing 7:17	14:7	11:13
punishment 6:7	repetitious 12:3	singing 7:6,18	talks 7:18 9:12	undress 6:24
11:20	12:7	8:6,12	telephone 4:24	undressed 6:25
punitive 12:11	replace 5:7	sir 7:14 8:4,25	4:24	6:25
12:12	report 4:15	sit 7:11	telephones 5:3	unit 4:18 6:9,12
purpose 11:8	12:24	sits 8:9	telling 7:16	6:18 9:23 10:3
pursuant 4:5	Reporter 2:6	sitting 6:22	terms 12:5	10:18,23 11:9
pushed 8:11	14:4	six 7:8 9:10 13:1	testified 4:25	11:12
9:22	Reporting 2:19	sleep 9:9	testimony 10:17	United 1:1 2:8
put 5:25 7:11	required 4:15	SOG 4:22 5:15	14:6	

February 18, 2009

18

units 8:8	1:52 2:9		
unnecessary	1337 3:6		
11:22	14 6:11 9:20		
unusual 11:19	16 5:1		
use 4:23 5:9,12	17 5:19		
11:14	18 1:15 5:19		
	19 6:10 14:21		
V			
valid 11:8	2		
vest 6:23	2008 5:2		
Videoconfere...	2009 1:15 14:21		
2:19	2010 14:20		
view 11:13	21 7:8		
viewing 11:16	251 2:20		
violation 5:11	27 9:12		
violent 11:12	28 9:18		
vs 1:7		3	
W	30X100085700		
W 1:20 3:10	2:6		
Walker 4:10	31st 5:2		
want 6:14	32 3:14		
WEDNESDAY	33 3:6		
1:15	330 3:10		
went 5:23		5	
whacked 10:10			
10:13	5 14:20		
White 2:20	52.1 4:14		
WILLIAM 1:8		6	
wit 11:14			
witness 10:6	609-586-2257		
words 10:25	3:7		
work 5:4		8	
WRIGHT 3:5	856-232-3337		
written 4:15	3:15		
		856-232-4561	
X	3:16		
X10857 14:21	856-546-1100		
	2:22		
0		856-968-9201	
08-1284 1:2 4:3	3:11		
08012 3:15			
08102 2:9 3:11		9	
08106 2:21			
08690 3:6	97 4:20		
		1	